

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:

ARTHUR MITCHELL HARDY
(Chapter 7 Case 95-42178)

Debtor

ARTHUR MITCHELL HARDY

Plaintiff

v.

DORIS HARDY

Defendant

Adversary Proceeding

Number 96-4004

FILED
at 12 O'clock & 47 min PM
Date 7/7/98
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

ORDER ON REMAND OF APPEAL

The above-captioned matter was remanded to this Court by Order of the Honorable B. Avant Edenfield, Judge, United States District Court for the Southern District of Georgia. In Judge Edenfield's Order dated October 6, 1987, he held as follows:

(81)

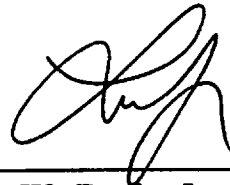
The bankruptcy court therefore erred in failing to estop Arthur from claiming that his alimony to Doris is dischargeable under 11 U.S.C. § 523(a)(5). Accordingly, its 7/17/96 and 11/5/96 opinions are **VACATED** and this case is remanded for further fact finding limited to the issue whether, by the date on which the bankruptcy court relied upon his inconsistent, "alimony/not-alimony" representation, (i.e., 7/17/96, the date it filed its summary judgment order), Arthur in fact had been "merely mistaken" about the 1994-1995 deduction of his alimony payments on his taxes. If in fact he was, then he must prove that by submitting copies of amended tax returns (filed prior to 7/17/96) showing that he conformed his tax returns with the position he advanced before the bankruptcy court.

If the evidence taken on remand fails to show such "mistake," then the bankruptcy court should deem him estopped from claiming that his alimony obligation is nondischargeable under § 523(a)(5), and thus deny him a discharge on that basis. In light of this disposition, it is not necessary to resolve whether the bankruptcy court correctly applied the § 523(a)(15) (A) & (B) ability to pay and detriment criteria.

A hearing was held June 24, 1998, to receive additional evidence in accordance with the instructions of the District Court. Mr. Hardy was present. Ms. Hardy requested in advance that she be excused from appearing and she was granted that request. The Court outlined the purpose of the hearing and afforded Mr. Hardy the opportunity to give sworn testimony or to introduce documentary evidence sufficient to meet the burden required by the District Court's Order. Mr. Hardy stated, and the Court accepts as true, that he claimed, as an alimony expense on his 1994-1995 federal income tax returns, sums paid to Ms. Hardy as

alimony and received the appropriate deduction. As a result his income tax liability for the two years in question was reduced. Mr. Hardy states that he claimed the deduction upon advice of counsel who informed him that "alimony in gross" under Alabama law could be claimed as a deductible item for federal income tax purposes.

Mr. Hardy answered, in response to the Court's question, that he had never amended either the 1994 or 1995 federal income tax returns at any time. Accordingly, I find that Mr. Hardy has been unable to satisfy his burden of proof in establishing that, because of a mistake he should not be estopped. Under the Remand Order, I therefore hold that he is estopped and the obligations he claimed as taxable deductions are in the nature of alimony. IT IS THEREFORE ORDERED that the obligations of the Debtor, Arthur Mitchell Hardy, to his ex-spouse, Doris Hardy, are declared non-dischargeable in these proceedings, and will survive and be enforceable notwithstanding his Chapter 7 discharge.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 6th day of July, 1998.